



One Hundred Eleventh Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

March 5, 2010

Ms. Gale Rossides
Acting Administrator
Transportation Security Administration
601 S. 12th Street
Arlington, VA 20528

Dear Ms. Rossides:

We are writing to submit comments on the Transportation Security Administration's (TSA) Notice of Proposed Rulemaking (NPRM) for aircraft repair station security published in the November 18, 2009 Federal Register [Docket No. TSA – 2004 – 17131]. In the “Vision 100 – Century of Aviation Reauthorization Act of 2003” (Vision 100), Congress directed the Department of Homeland Security (DHS), in consultation with the Federal Aviation Administration (FAA), to conduct a security review and audit of FAA-certificated foreign repair stations and to issue final regulations to “ensure the security of foreign and domestic aircraft repair stations.”¹ After more than four years of no progress during the previous Administration, we are pleased that TSA is now moving forward with the rulemaking process to secure these repair stations.

According to FAA, air carriers' use of repair stations has risen dramatically in the last several years. Between 1996 and 2008, the percentage of outsourced maintenance to repair stations has increased from 37 percent to 64 percent based on dollars spent.² As of December 2009, there were 4,858 FAA-certified repair stations – including 731 foreign repair stations – that are not operated by a U.S. air carrier. With such a large number of repair stations worldwide, the responsibility for ensuring security at these facilities is immense.

Generally, we believe that the approach proposed in this NPRM is appropriate and will enhance security against aircraft sabotage by terrorist agents aiming to exploit vulnerabilities at repair stations. Moreover, the Government Accountability Office (GAO) has emphasized that a risk-based approach, like the one proposed in this NPRM, is essential to the success of transportation security programs.³

¹ Section 611(b), P.L. 108-176.

² U.S. Department of Transportation.

³ Comprehensive Risk Assessments and Stronger Internal Controls Needed to Help Inform TSA Resource

The following comments are submitted for your review. Please provide the Committee on Homeland Security with a written response to these comments prior to the issuance of the final rule.

History of Committee Action Regarding Repair Stations

The Committee on Homeland Security has a longstanding interest in the issuance and implementation of the security regulations called for in Vision 100. In November 2009, the Subcommittee on Transportation Security and Infrastructure Protection held a hearing to assess security at foreign repair stations.⁴ Testimony was received from the Inspector General (IG) of the Department of Transportation (DOT), TSA, FAA, and labor union officials who represent thousands of workers at domestic repair stations. Witness testimony raised serious concerns about security risks associated with foreign repair stations.

In May 2009, the Committee reported H.R. 2200, the “Transportation Security Administration Authorization Act,” which directed TSA to issue the overdue regulations required by Vision 100.⁵ H.R. 2200 was overwhelmingly passed by the House of Representatives in June 2009. In the 110th Congress, the Committee also included relevant language in the “Implementing Recommendations of the 9/11 Commission Act of 2007,” barring the FAA Administrator from certifying any new (previously non-certificated) repair stations until the security regulations were issued by TSA.⁶ During the 109th Congress, the Committee reported H.R. 5814, the “Department of Homeland Security Authorization Act for Fiscal year 2007,” which included similar language.

Concern with Foreign Repair Stations

While this NPRM would establish security protocols for both domestic and foreign repair stations, we have heard from stakeholders that security varies widely at foreign stations in particular. Therefore, we urge TSA to give special consideration to foreign repair stations in its overall risk assessment. Such enhanced consideration of foreign repair stations is merited given that the regulatory scheme for domestic repair stations is currently far more rigorous.

The gap between security standards for employees of foreign and domestic repair stations is an important example of why foreign repair stations deserve special attention. Domestic repair station employees requiring unescorted access to secure areas at a domestic commercial service airport regulated by TSA must undergo a criminal history background check as well as a TSA security threat assessment, which involves a check against the terrorist watchlist. These employees are also required to display identification specifically indicating that they have unescorted access to secure areas. Employees of a domestic repair station operated by a U.S. air carrier are also subject to criminal history background checks and the TSA security threat

Allocation, GAO-09-492, March 27, 2009.

⁴ “Is the Flying Public Protected? An Assessment of Security at Foreign Repair Stations.”

⁵ Section 206, Transportation Security Administration Authorization Act of 2009.

⁶ Section 1616, Implementing Recommendations of the 9/11 Commission Act of 2007.

assessment. Nevertheless, we believe provisions in this NPRM will strengthen security at off-airport repair stations, particularly as they relate to access controls and perimeter security.

Inspections and Verification of Repair Station Compliance

To successfully implement these regulations, we expect that TSA will need to acquire additional resources to assess security programs and conduct audits and inspections. With the prospect of a final rule being implemented in the near term, we are concerned that the President's FY2011 budget does not provide for an increase in repair station inspectors. In fact, there are only 15 inspectors budgeted for international repair station inspections, and that number has not changed since FY2007. In advance of finalizing this rule, we urge you to produce a staffing plan that reflects what resources are required for full implementation and to transmit this plan to the Committee. It should set forth staffing goals for inspector personnel, frequency of inspections, and administrative staffing requirements to process and verify security profiles at both domestic and foreign repair stations. Establishing a security program that lacks personnel and program resources for proper oversight and verification is not likely to increase security.

Further, we have questions about how the inspection regime would operate. For instance, would an inspector be sent out to a repair station prior to TSA accepting that repair station's security profile? Are repair stations going to be tiered by risk to help evaluate security programs and establish inspection requirements? Repair stations vary in size, proximity to airports, and the type of repair work they perform. A repair station at which work on small electrical components is performed may not present the same security risk as a station where heavy airframe maintenance is conducted. What are your goals for the frequency of inspecting foreign repair stations deemed to be a higher risk?

We also request that you clarify whether TSA intends to conduct unannounced inspections at repair station facilities. In section 1554.5 of the NPRM, it states that repair stations must be prepared to allow authorized TSA officials entry without advanced notice. However, for foreign repair stations, the summary of the NPRM states that TSA must follow international protocols requiring prior notification before inspections. Please clarify whether you intend to conduct unannounced inspections at foreign repair stations.

Watchlisting and Criminal History Background Checks

The NPRM indicates that requirements of a repair station's security program would include employment history checks on employees, to the extent permitted by the laws of the country in which the repair station is located. While such a check would be helpful, we are concerned that this provision does not specifically require employers to access a criminal history background check where available or even discuss requiring employers to make their employee information available to TSA for a name-based check against the terrorist watchlist.

In 2003, similar concerns were expressed by the DOT IG, who recommended that criminal history background checks be conducted on all employees at domestic and foreign repair stations to enhance security.⁷

Sensitive Security Information

The NPRM proposes to amend 49 CFR part 1520 to include repair station operators as “covered persons” subject to Sensitive Security Information (SSI) requirements. We are concerned that, in the process of regulating repair stations and promulgating associated security directives, TSA may lose control of the dissemination of SSI material. In the wake of recent security lapses involving the improper redacting and posting of SSI material to the Internet, we ask that TSA develop specific policies and guidance to govern the release and transmission of SSI material to repair station operators.

Stakeholder Input

While we are pleased to see the issuance of this NPRM, we have heard from relevant stakeholders that TSA did not engage them in its development. In particular, we have learned that no formal outreach to labor unions representing aviation mechanics has been done since 2004. We strongly believe that the strength of any security regime for the private sector rests on the extent to which stakeholders are brought into the process. Therefore, we urge you to reach out to all relevant stakeholders, including air carriers, labor unions, and aircraft repair and manufacturing entities before the rule is finalized.

U.S. Air Carrier Responsibility

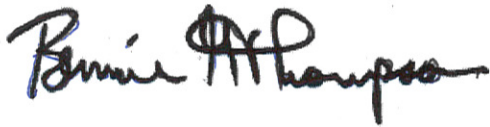
While TSA has addressed vulnerabilities at repair stations with this NPRM, we know that U.S. air carriers have a great interest in ensuring that outsourced maintenance is performed at secure facilities under appropriate supervision from air carrier representatives. We encourage TSA to leverage its relationship with air carriers in working on complementary public-private approaches to improving security at repair stations. We also encourage TSA to work with the International Civil Aviation Organization in establishing stronger security standards for repair stations worldwide.

The security of the aviation system depends upon implementing effective security programs and procedures throughout the system. Aircraft repair stations are a critical component of aircraft maintenance and repair. If not properly secured, they can create opportunities for terrorists and other individuals who wish to commandeer, tamper, or sabotage aircraft. This potential risk must be addressed, and we think that TSA is moving in the right direction in implementing a risk-based security oversight and inspection program for repair stations.

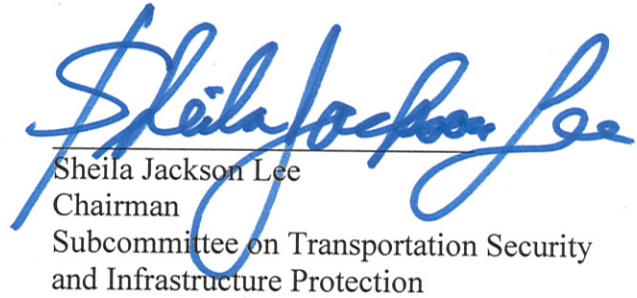
⁷ Security at Aircraft Repair Stations, Department of Transportation Office of the Inspector General, 2003 [AV-2003-027].

Thank you for the opportunity to provide comments regarding the NPRM. We look forward to your response to our concerns.

Sincerely,



Bennie G. Thompson
Chairman
Committee on Homeland Security



Sheila Jackson Lee
Chairman
Subcommittee on Transportation Security
and Infrastructure Protection